

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Cr. No. 19-4447-KWR

MAROQUEZ CLAH,

Defendant.

**EMERGENCY MOTION TO MODIFY CONDITIONS OF RELEASE**

(For Ruling Before a Magistrate Judge)

Defendant Maroquez Clah, by and through his counsel of record, Assistant Federal Public Defender Emily P. Carey, moves this court to modify the existing Order Setting Conditions of Release (Doc. 14). Specifically, Mr. Clah is requesting that the Court allow him to be released from the third party custody of the La Pasada Halfway House, allow his pretrial release supervision to be transferred to the District of Arizona, and to permit him to reside with his mother, father, and child at their residence in Red Valley, Arizona. U.S. Probation and Pretrial Services Office Jeffrey Martinez-Spelich does not oppose the relief requested. However, Assistant United States Attorney Novaline Wilson is opposed to the relief Mr. Clah seeks. As grounds, Mr. Clah states the following:

1. On February 20, 2020, Mr. Clah pleaded not guilty to an indictment charging him with one count of involuntary manslaughter in violation of 18 U.S.C. §§ 1153 and 1112. Trial in this matter is set for July 13, 2020.

2. Also on February 20, 2020, the Court held a detention hearing at which Mr. Clah requested release on account of his minimal criminal history, strong family and community ties, and positive employment history. Mr. Clah also informed the Court that he had sole custody of his four-year old child and was needed at home to assist his elderly parents. The Court authorized Mr.

Clah's release to the third party custody of the La Pasada Halfway House in Albuquerque, New Mexico, but expressed that should Mr. Clah perform well at La Pasada, the Court would consider possible modification of conditions in the future.

3. The Court entered an Order Setting Conditions of Release (Doc. 14) on February 20, 2020, and Mr. Clah has been residing at the La Pasada Halfway House since that time. Among other conditions, the Order restricts Mr. Clah's travel to Bernalillo County, New Mexico unless he obtains prior approval of the supervising officer. (Doc. 14).

4. In the past month, Mr. Clah has complied with all of the conditions of his pretrial release without incident. He advises that he has been attending counseling sessions and following the rules of the halfway house and instructions of his pretrial services officer.

5. Mr. Clah requests the Court's permission to allow him to terminate residence at the La Pasada Halfway House and to reside with his parents and child at their residence in Red Valley, Arizona. This would also require transfer of his pretrial supervision to the District of Arizona under whose jurisdiction Red Valley, Arizona falls, and modification to travel restrictions. Mr. Clah makes this request for the following reasons.

6. First, Mr. Clah's father suffers from kidney failure and has been on a transplant list for years and on weekly dialysis for two and one half years. Mr. Clah's father's physical health has declined in recent months and he has mostly been wheelchair bound due to weakness. Trips to the emergency room have become somewhat regular occurrences. Since Mr. Clah's arrest, his father's health has deteriorated even further. Moreover, Mr. Clah's mother Bessie Begay contacted undersigned counsel to inform her that in the past few weeks Mr. Clah's father has developed something akin to dementia. Ms. Begay is extremely worried and recounted that her husband has never before had memory problems or behaved in the bizarre way he is now behaving. Prior to his

arrest, Mr. Clah took on all of the household tasks and helped his mother with his father's health care. Presently Ms. Begay is trying to care for her husband and household alone. Given his father's already compromised health, Mr. Clah is extremely worried about being so far away from home in the midst of the global pandemic.

7. Mr. Clah is also a single parent to his four-year old daughter. According to Mr. Clah, the child's mother left in the summer of 2017 and her whereabouts are unknown. Since Mr. Clah's arrest, his mother has taken on the burden of caring for her granddaughter. This has become particularly difficult in light of the very serious health issues Ms. Begay's husband is confronting. Moreover, because schooling, daycare, and other programming for children has ceased indefinitely in an effort to curb the spread of the coronavirus, there is no break for Ms. Begay. Mr. Clah would like to be present to care for his daughter as well as his parents.

8. Mr. Clah suffered a number of significant injuries because of the accident that gave rise to the charged offense. All of his doctors are located in Shiprock and Farmington. Allowing him to live with family would facilitate his ability to attend previously scheduled medical appointments and ensure continuity of care.

9. Finally, the Court is now all too aware of the growing public health crisis. On March 13, 2020, the Court issued an Administrative Order related to Court Operations in Light of the Coronavirus Outbreak (Order) (20-MC-00004-9) in which the Court recognized growing national and state concern pertaining to the coronavirus, and measures courts and other institutions have taken to combat the spread of the virus. To that end, the Order continued all civil and criminal jury trials scheduled to commence on or before April 10, 2020 and suspended all grand jury proceedings in the District of New Mexico pending further order of the Court.

10. Since that Order was issued, concern for spread of the coronavirus has intensified, as have government actions to combat the spread. On March 18, 2020, New Mexico Governor Michelle Lujan Grisham issued new emergency health orders to protect the public,<sup>1</sup> and Albuquerque Mayor Tim Keller declared a public health emergency in the city.<sup>2</sup> On March 23, 2020, the New Mexico Department of Health reported 65 confirmed cases of the coronavirus.<sup>3</sup> Navajo Nation President Jonathan Nez announced 14 reported cases on the Navajo Nation and warns that he may issue a shelter in place order should cases continue to spread.<sup>4</sup> Several communities are already under “shelter in place” restrictions, and it is unclear what the environment will look like even a week from now.

11. In light of the global pandemic, Mr. Clah is making an urgent request to the Court to allow him to be with his family in Red Valley, Arizona before restrictions on movement make that impossible. Not only would this remove Mr. Clah from a communal living situation, thereby reducing his risk of exposure to the virus, but it would also allow him to be with his family during this stressful time and help reduce the burden that has fallen solely on his mother’s shoulders. To assuage any concerns that the Court may have regarding alcohol use due to the nature of the charged offense, Mr. Clah is willing to submit to any additional condition the Court deems proper including the condition that he utilize a handheld breathalyzer device. Under existing conditions, Mr. Clah is prohibited from operating a motor vehicle and advises that he no longer has his own vehicle.

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<sup>1</sup> See KRQE, Gov. Lujan Grisham orders recreational facilities to close; restaurants, bars limited to takeout and delivery accessed on 03.18.2020 at <https://www.krqe.com/health/coronavirus-new-mexico/gov-lujan-grisham-to-provide-coronavirus-update/>.

<sup>2</sup> See Jessica Dyer, Keller proclaims emergency in Albuquerque, Albuquerque Journal accessed on March 18, 2020 at <https://www.abqjournal.com/1433566/keller-proclaims-emergency-in-albuquerque.html>.

<sup>3</sup> See New Mexico Department of Health COVID-19 Updates accessed on March 23, 2020 at <https://cv.nmhealth.org/>.

<sup>4</sup> See KRQE, Navajo Nation Reports 14 cases of coronavirus, urges public to stay home, accessed on March 20, 2020 at <https://www.krqe.com/health/coronavirus-new-mexico/navajo-nation-reports-14-cases-of-coronavirus-president-nez-urges-public-to-stay-home/>.

12. United States Pretrial Services Officer (USPO) Jeffrey Martinez-Spelich does not oppose Mr. Clah's request. The United States Probation and Pretrial Services Office for the District of Arizona conducted a home assessment of Mr. Clah's parents' residence in Red Valley and has informed USPO Martinez-Spelich that the office will take responsibility for Mr. Clah's supervision. Mr. Clah's travel restrictions would need to be amended to allow travel within Apache County (where Red Valley is located), as well as to San Juan County so Mr. Clah can attend medical appointments in Shiprock and Farmington, and Coconino and Navajo Counties so that Mr. Clah can attend meetings with his pretrial services officer in Flagstaff, Arizona. All other conditions would remain the same, including the restriction on operating a motor vehicle.

13. Assistant United States Attorney Novaline Wilson opposes Mr. Clah's request. Undersigned counsel attempted to reach out to Ms. Wilson to discuss the nature of her opposition but was unsuccessful in doing so.

WHEREFORE, for the foregoing reasons, Mr. Clah respectfully requests that the Court modify his conditions and release him from the third party custody of the La Pasada Halfway House, transfer his pretrial supervision to the District of Arizona and modify his travel restrictions as outlined above so that he may reside with his parents at their residence in Red Valley, Arizona. All previously issued conditions in the Order Setting Conditions of Release, filed February 20, 2020 would remain in place (Doc. 14).

Respectfully Submitted,

**FEDERAL PUBLIC DEFENDER**  
111 Lomas NW, Suite 501  
Albuquerque, NM 87102  
(505) 346-2489

*Electronically filed March 23, 2020*

/s/ Emily P. Carey

Assistant Federal Public Defender

Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following: Novaline Wilson, Assistant United States Attorney.

*Electronically filed March 23, 2020*

/s/ Emily P. Carey

Assistant Federal Public Defender